

Legislating Dignity:

Renewing the Call for a Legislated Long-Term Care Residents' Bill of Rights

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It has been more than a decade since the Law Reform Commission of Saskatchewan issued the *Civil Rights in Saskatchewan Long-Term Care Facilities: Final Report (Final Report)* calling for a legislated residents' bill of rights codifying the civil rights of older people in long-term care homes. In the ensuing 12 years, the Saskatchewan government has failed to materialize the Final Report's recommendations to ensure civil rights are recognized and enforceable in long-term care homes.

The Vulnerability of Elderly Long-Term Care Home Residents

Individuals residing in long-term care homes are some of our most vulnerable citizens. This particular vulnerability is the result of the elderly populations increased physical frailty and declining mental acuity or a combination of these factors. Particularly, many residents in long-term care facilities are there because of their physical and/or mental deterioration. They may also suffer from disabilities resulting in them becoming reliant on others for care. This sets the stage for abuse. The SHA confirms that elderly individuals are a higher risk for abuse within a long-term care home; including where an elder has required reliance on others, and is isolated in a home that restricts visitors or is far away from their support network.

In the 2021 census, indicated "risks factors for female, presence of a disability, and being older Saskatchewan, our elderly predominately female, with those 85 years and older or health-related issues.

"But I being vulnerable have only my dignity. I have spread my dignity at your feet. Tread softly because you tread on my dignity."

[REV'D CATHY SIMPSON
PARAPHRASING WILLIAM
BUTLER YEATS]

Statistics Canada elder abuse are being cognitive impairment and than 74 years old." In population is a significant proportion of having activity limitations And more than a quarter population lives in

collective dwellings. The ready inference is that the elderly population in Saskatchewan is at an increased risk of elder abuse. Abuse which is correlated with increased and premature death.

Because the Ministry of Health regulates personal care comes (long-term care) both in the private and public sphere government action is needed to help prevent elder abuse and protect a vulnerable segment of the population. Elder abuse is a violation of human and civil rights.

Gaps In The Current System

Civil rights are protected under the *Charter, The Saskatchewan Human Rights Code* and criminal avenues. Currently the *Personal Care Home Regulations, 1996* call for the rights enumerated within section 34, to be 'respected' but contains no enforcement or complaint mechanisms. This does not give the appearance of the rights being important or protected. Further, it is not practical to attempt to enforce your rights do if you do not know what those rights are or if the rights are specific to your circumstances. The Final Report called for a residents' bill of rights because "legal recognition gives...official status emphasize[ing] the importance of the document and encourage[ing] compliance." A detailed complaints procedure is critical to having useful and legally robust rights. Saskatchewan has pursued a policy of letting care homes decide for themselves what rights are available but without a thorough complaint and enforcement mechanism this leads to a lack of knowledge and respect for residents' civil rights.

Revised sections of *The Personal Care Homes Regulations, 1996*

34(1) The licensee of a personal care home shall ensure that a residents' bill of rights is developed and shall ensure that in addition to any other rights and privileges residents may have at law, it includes the following rights:

- (a) to be treated with respect, dignity, kindness, consideration and behaviour that fully recognizes the resident's inherent dignity;
- (b) to participation in their own care and to freely express views including a right to:
 - i. voice concerns or recommend changes to rules and services provided in the home;
 - ii. have their participation in decision-making respected;
 - iii. have access to a fair and effective process to express concerns, make complaints or resolve disputes within the facility;
 - iv. be informed about how to make a complaint to an authority outside the facility;
 - v. be informed in writing of any law, rules or policy affecting services provided to them;
 - vi. have their family or designate exercise the rights under this clause on their behalf.
- (c) to register complaints in accordance with the complaints process;
- (d) to have their lifestyle and choices respected and supported, and to pursue social, cultural, religious, spiritual and other interests without interference and with reasonable assistance by the licensee;
- (e) to be afforded privacy in treatment and in caring for their personal needs
- (f) to live in a safe and clean environment;
- (g) to have personal health information within the meaning of *The Health Information Protection Act* kept confidential in accordance with that Act, and to have access to their records of personal health information in accordance with that Act;
- (h) to ongoing support for their physical, mental, social, emotional wellbeing and quality of life and to assistance in contacting an individual to support these needs;
- (i) to receive visitors and to communicate with visitors in private;
- (j) to have personal privacy respected in relation to their bedroom, belongings, and storage spaces, including the right to:
 - i. sole use of their possessions unless permission has been given for others to use those possessions;
 - ii. keep and display personal possessions, pictures and furnishings in their private spaces.
- (k) to communicate within the home, by any means, in private;
- (l) to leave and return to the home as desired;
- (m) to be free from any actions of the licensee or staff of a punitive nature, including physical punishment, threats of any kind, intimidation, verbal, mental or emotional abuse or confinement, including the right to:
 - i. not be restrained, except in the limited circumstances provided for under these Regulations and subjected to the guidelines provided for under these Regulations.
- (n) to choose their own medical, optometric, dental, nursing or other health care professional, including the right to:
 - i. give or refuse consent to any treatment, care or services for which their consent is required by law and to be informed of the consequences of giving or refusing consent;
 - ii. participate fully in any decision considering any aspect of their care, including any decision concerning their admission, discharge or transfer to or from a special care home and to obtain an independent opinion with regard to any of those matters.

34(2) A licensee shall ensure that the rights and privileges mentioned in subsection (1) are respected, and shall ensure the following:

- (a) a resident is not subject to eviction, discharge, intimidation, coercion, imposition of any pecuniary or other penalty, suspension of a service to, denial of any right or benefit or subject to other discrimination because of a complaint made under these Regulations or the Patient Care Review Board Act.

34(3) A complaint made regarding the rights under this section may be made to the licensee and the Minister.

- (a) a complaint made under section (1) is a care quality complaint for the purposes of the *Patient Care Review Board Act*.

34.1 A licensee must organize a meeting at least twice in each year for the residents, the family members of residents and supports for the purpose of promoting the interests of residents and their involvement in decisions that affect their day-to-day living.

34.1(1) A review of the residents' bill of rights must occur at each residents meeting.

35 A licensee shall post prominently in the home and provide to each resident, a copy of the following:

- (a) the residents' bill of rights enumerated in section 34;
- (b) the rules of the home.

Saskatchewan differs from other jurisdictions both within Canada and around the world. This research looked at Manitoba, Ontario, and British Columbia, Australia, Vietnam and the United Nations.

What Is Happening In Other Jurisdictions

Manitoba through *The Health Services Insurance Act* and the *Personal Care Home Standards Regulations* has a legislated minimum standard for a residents' bill of rights. Manitoba's requirements are the floor for what a bill can look like. They encourage care homes to work with residents in developing a unique to location bill.

Ontario through the *Fixing Long-Term Care Act, 2021* has set out the required comprehensive residents' bill of rights. The significant difference from all other jurisdictions is that Ontario has legislated that the residents' bill of rights can be enforced by the resident as though it were a contract between the licensee and the resident. This unique legal enforcement method means a resident can file a civil claim for breach of contract.

British Columbia through the *Community Care and Assisted Living Act* has a legislated residents' bill of rights; however, there is no language making this the mandatory minimum or maximum. BC has a specific complaint mechanism through a Patient Care Quality Review Board which operates under its own Act.

Australia through the Charter of Aged Care Rights sets out rights of individuals receiving government-subsidized aged care services. There are no requirements for private care homes. However, there is no enforcement mechanisms or attached penalties for a breach of the rights. The Commission charged with oversight does not have the authority to enforce or penalize.

Vietnam through the *Ordinance on elderly people* protects the rights of elderly people and places the onus on the State and all citizens to respect and help elderly people. The *Ordinance* contains a mechanism to handle people and organizations who infringe on elder's rights and includes administrative penalties and penal liability. Uniquely, Vietnam provides a different cultural perspective which is increasingly relevant in Canada's multicultural landscape.

The United Nations has been working towards a Convention on the Rights of Older Persons since 1982. If Canada ratified such a convention it would be binding and have a huge impact on the required respect and consideration for the rights of older persons. International pressure would have trickle down effects and a large scale enforcement process for systemic issues..

Recommendation For Change

Suggest that amending Saskatchewan's *Personal Care Home Regulations, 1996* is the simplest and quickest method of obtaining a required Residents' bill of Rights in Saskatchewan. A draft of the revised regulations is in the centre of this poster.

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Scan for References

